IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7874 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DEVJIBHAI SHANTILAL

Appearance:

Mr.Premal Joshi, Asst.GOVERNMENT PLEADER for Petitioner

MR AR THACKER for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 06/02/2001

ORAL JUDGEMENT

Heard Learned Asst.Govt.Pleader Mr.Premal Joshi for the petitioner and learned Advocate Mr.A.R.Thakker for the respondent.

2. The petitioner has been aggrieved by the award passed by the Labour Court, Jamnagar in Ref (LCJ) No.1283/90 dated 6.1.2000. By virtue of the impugned award it has been directed that the respondent-daily wager should be reinstated to his original post as a daily wager without backwages.

3. Facts giving rise to the present petition, in a nutshell, are as under:

(i) The respondent was working as a daily wager Watchman under the petitioner. It is his case that he was working as a Watchman since 1983 and he had worked for more than 240 days in all the years during which he had worked as a daily wager. As his service was terminated without following any legal procedure, on 1.9.86 he raised a dispute and ultimately the matter was placed before the Labour Court, Jamnagar, and after considering the evidence, and after hearing the learned advocates, the Labour Court passed the impugned award.

4. It has been submitted by Ld.AGP-Mr.Premal Joshi appearing for the petitioner that the impugned award is unjust and illegal for the reason that the respondent has no right to continue to work at a project which has been now closed down. It has been submitted by him that the respondent was engaged to work as a Watchman at a particular project and as the said project has come to an end, services of the respondent were not required and, therefore, the service of the respondent was terminated. In the circumstances, it has been submitted by him that the Labour Court ought not to have directed the petitioner to reinstate the respondent to his original post.

5. On the other hand, learned Advocate-Mr.Thakker appearing for the respondent has submitted that before the Labour Court it was admitted by the petitioner that the respondent had worked for more than 240 days in several years and, therefore, the respondent had a right to continue to work unless his service was terminated in accordance with the provisions of the Industrial Disputes Act, 1947(hereinafter referred to as "the Act"). It has been submitted by him that even as per the case of the petitioner, the formalities which were required to be completed before terminating the service of the respondent had not been followed and, therefore, there was violation of the provisions of Sec.25F of the Act. It has been fairly submitted by him that as the respondent was working elsewhere during the pendency of the litigation before the Conciliation Officer and the

Labour Court at Jamnagar, the Labour Court had not awarded backwages to the respondent, and the respondent never made any grievance with regard to not being awarded backwages. It has been, therefore, submitted by him that the award passed by the Labour Court is just, legal and proper and, therefore, the petition deserves to be dismissed.

6. I have heard the learned advocates and have also perused the impugned award. It is very clear that it was admitted by the officer of the petitioner that the respondent had worked for more than 240 days in several years and, therefore, he had a right to get retrenchment compensation and necessary notice under the provisions of Section 25F of the Act. It is also not in dispute that the formalities which were required to be completed under the provisions of section 25F of the Act had not been done. Upon perusal of the impugned award, it is very clear that the respondent was never appointed at a particular project as submitted by the Ld.AGP. Had it been so, there would have been some evidence to that effect.

7. In the circumstances, I do not find any illegality committed by the Labour Court while passing the impugned award in question. Under the circumstances, the petition is dismissed and rule is discharged with no order as to costs. Needless to say that if the services of the respondent are not required, it would be open to the petitioner to terminate his service in accordance with law.

6.2.2001 (A.R.DAVE,J)